

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: CV 15-03764-AB (AJWx)

Date: August 12, 2016

Title: *Um Corporation v. Tsuburaya Productions Co. Ltd.*

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian
Deputy Clerk

N/A
Court Reporter

Attorneys Present for Plaintiffs:

None Appearing

Attorneys Present for Defendants:

None Appearing

Proceedings: [In Chambers] Order Denying Defendant And Counterclaimant Tsuburaya Productions Co. Ltd.’s Request For Entry Of Default Against Counter-Defendant Sompote Saengduenchai [71]; Order To Show Cause Regarding Dismissal for Lack of Prosecution

On July 21, 2016, Defendant and Counterclaimant Tsuburaya Productions Co. Ltd. (“Tsuburaya”) filed a Request for Entry of Default against Counterdefendant Sompote Saengduenchai, a Thai individual. (Dkt. No. 71.) Tsuburaya addressed its application to the Clerk of the Court. (Dkt. No. 71.) On July 22, 2016, the Clerk forwarded the Request to this Court because the Clerk is not authorized to determine the propriety of service in a foreign country. (Dkt. No. 73.)

While Tsuburaya’s Request and counsel’s accompanying Declaration does not identify the Federal Rule of Civil Procedure under which it has attempted to effect service, (Dkt. Nos. 71, 71-1), the underlying Proof of Service states that Tsuburaya effected personal service on Mr. Saengduenchai pursuant to Rule 4(f)(2)(C)(i), (Dkt. No. 68 at 3).¹ Therein, Tsuburaya’s Thai counsel attested by declaration that, after Mr. Saegduenchai

¹ The Proof of Service actually states that “service was effected . . . pursuant to [Rule] 4(f)(C)(i).” (Dkt. No. 68 at 3.) The Court attributes this discrepancy to typographical error and construes Tsuburaya’s personal service attempt as one under Rule 4(f)(2)(C)(i).

rejected numerous attempts at personal service, such personal service was finally effected by leaving the documents on a vehicle belonging to Mr. Saegduenchai's daughter in Mr. Saegduenchai's presence. (Dkt. No. 68-1, Rakwattanakul Decl. ¶ 15.) During the final encounter, Mr. Saegduenchai again objected to personal service, stating that service should be effected "through the Ministry of Foreign Affairs." (*Id.*)

Under Rule 4(f)(2)(C)(i), where there is no internationally agreed means to effect service, an individual may be served in a foreign country by "delivering a copy of the summons and of the complaint to the individual personally" "unless prohibited by the foreign country's law." Fed. R. Civ. P. 4(f)(2)(C)(i). Accordingly, the Court cannot enter default if personal service is "prohibited by the foreign country's law." *Id.* Here, Tsuburaya provides no information as to Thai law governing service of process. Moreover, Mr. Saegduenchai has attempted to reject personal service as procedurally defective. Because Tsuburaya "fails to establish [that] the law of Thailand does not prohibit" the service that it purports to have effected on Mr. Saegduenchai, Tsuburaya is not entitled to relief that it requests. *Accord Haas v. Chaiyaphakdiphon*, Case No. CV 12-01309 LDG (CWHx), 2013 WL 783046, ** 1–2 (D. Nev. Feb. 28, 2013) (vacating entry of default as improvidently entered where movant failed to establish that the method of service was not prohibited by the foreign country's law).

For the foregoing reasons, Tsuburaya's Request is **DENIED**.

Accordingly, Tsuburaya is **ORDERED TO SHOW CAUSE** in writing on or before **August 26, 2016** why this case should not be dismissed for lack of prosecution. Tsuburaya can satisfy this order by filing a status report detailing its prosecution of the action, by seeking entry of default with a renewed request curing the described deficiencies, or by dismissing the complaint.

IT IS SO ORDERED.